

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

COMCAST OF GEORGIA, INCORPORATED¹

Employer

and

Case 10-RD-1395

DENNIS K. GIBBONS, JR., AN INDIVIDUAL

Petitioner

and

COMMUNICATION WORKERS OF AMERICA
LOCAL 3250, AFL-CIO

Union

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record of this case,² the undersigned finds:

¹ The Name of the Employer appears as amended at the hearing.

² The Employer and the Union filed post-hearing briefs which have been carefully considered. I note, however, that the Union's brief does not reflect that it was served upon any of the other parties.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.³

2. The Employer is a Delaware corporation with an office and place of business in Stone Mountain, Georgia, where it is engaged in the installation of broadband services, such as cable television, cable entertainment, digital cable, high speed internet and other services. During the past twelve months a representative period, the Employer from its Georgia operations has derived gross revenues in excess of \$100,000 and has purchased and received goods and materials in excess of \$50,000 directly from suppliers located outside the State of Georgia. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved is recognized as the collective bargaining representative for the unit in question. Accordingly, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. I conclude that the unit sought by the Petitioner, which is co-extensive with the recognized unit, is appropriate for the purposes of collective bargaining.

³ I specifically affirm the Hearing Officer's denial of the Union's motion that he recuse himself as Hearing Officer. I am administratively satisfied that the Union's accusations of alleged inappropriate conduct in his prior handling of certain unfair labor practice charges filed against the Employer by the Union are totally unfounded and unwarranted. At hearing the Union also moved to dismiss the petition on the basis that it was tainted by alleged unlawful Employer conduct. The Union's claim in this regard was the subject of a prior unfair labor practice charge which was fully investigated by the Region and dismissed. The Region's dismissal was subsequently affirmed by the General Counsel's Office of Appeals. Notwithstanding that the Union has recently moved the Office of Appeals for reconsideration of its upholding of said dismissal, I find this rationale for petition dismissal to be without merit. The Union also seeks dismissal based upon its claim of "prejudicial advocacy" on the part of the Hearing Officer in reference to the processing of the petition. Again, I find and am administratively satisfied that the Union's claims are totally devoid of merit. The Union's motion for dismissal of the petition is denied.

In view of the foregoing and the record as a whole, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time field technicians, including broadband sales and service technicians, system technicians, network technicians, construction technicians, and inventory control technicians employed by the Employer at its 1707 Lewis Way, Stone Mountain, Georgia facility, but excluding all other employees, office clerical employees, professional employees guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Communication Workers of America, Local 3250, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in

the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by the Communication Workers of America, Local 3250, AFL-CIO.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. To be timely filed, the list must be received in the **Regional Office, 233 Peachtree Street, NE, Harris Tower, Suite 1000, Atlanta, Georgia 30303 on or before March 18, 2003.** No extension of time to file this list shall be granted

except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (404) 331-2858.

Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estopps employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, NW, Washington, DC 20570.

This request for review must be received by the Board in Washington by 5:00
p.m. EST on **March 25, 2003**.

Dated at Atlanta, Georgia, this 11th day of March 2003.



/s/ Martin M. Arlook

Martin M. Arlook, Regional Director
National Labor Relations Board
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